

LAW OFFICES

HOYLE, MORRIS & KERR

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RECEIVED

MAY 21 1987

**EPA, REGION III
OFFICE OF REGIONAL COUNSEL**

May 21, 1987

Ellen Teplitzky, Esq.
Hazardous Waste Branch
Office of Regional Counsel
United States Environmental
Protection Agency
841 Chestnut Street
Philadelphia, Pennsylvania 19107

HAND DELIVER

Re: Consent Order re: 733-735 Sansom Street

Dear Ellen:

Enclosed is a revised draft of the proposed Consent Order in this matter. As you will see, this draft includes essentially the same work to be performed that was specified in your original draft but includes a number of modifications which provide some reasonable protections to my client, Sable Diamonds. As I mentioned when we first met on Monday, May 18, 1987, we are interested in moving ahead with our efforts to remedy this situation as rapidly as possible. Our proposed contractor, Weston, has been on the scene, conducted a preliminary investigation, and has prepared a work plan which I trust will meet with EPA's approval. Indeed, my understanding at our meeting on Monday was that EPA had already pre-approved the initial round of cleanup proposed by Weston. In light of my client's serious and substantial efforts to resolve this situation, I would urge that you give full and careful consideration to the changes I have suggested.

I would like to explain the basis for the major modifications I am suggesting. I will be glad to meet with you at your convenience to spell out the reasoning behind my proposals or to discuss any compromises you desire. I have deleted the findings of fact, determinations, and most of the conclusions of law for the simple reason that, as a Consent Order, these are not necessary and, indeed, may not be matters on which my client agrees or even should be asked to agree. The entire theory behind this Consent Order is that my client would agree to make certain efforts but would not be entering into any factual concessions or admissions of liability.

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HOYLE, MORRIS & KERR

Ellen Teplitzky, Esq.


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With respect to the City of Philadelphia's guideline of 0.24 microgram/m³, I think you will agree that it is unreasonable to require cleanup to a level that is below even the detection limits of the best available equipment. At our meeting on Monday, EPA took the position that a maximum air reading of 10 micrograms/m³ would be satisfactory from its point of view. We are certainly willing to use our best efforts to meet the City's substantially lower guideline, however, I do not think my client should be automatically penalized should his best efforts fail.

I have inserted a release which makes it clear that this Agreement resolves my client's liability for this situation. Of course, EPA retains the right to take all appropriate action to enforce the terms of the Agreement and also retains the right to seek relief against persons who are not a party to this Agreement, but, I think you will agree, the purpose of this Agreement is to spell out precisely my client's responsibilities and liabilities to the government arising out of its past actions in this matter. The release, of course, does not preclude EPA's action against my client for anything that might occur in the future.

There are a number of other modifications that I have made. I hope you will find them to be reasonable. I believe it is in the interest of all concerned to have this matter resolved as expeditiously and as amicably as possible. I look forward to hearing from you.

Very truly yours,


Ralph A. Jacobs
For HOYLE, MORRIS & KERR

Enclosure

cc: Mr. Harry Sable

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:

Sable Diamonds
735 Sansom Street
Philadelphia, PA 19106

RESPONDENT

Proceeding Under Section
106 of the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, as amended,
42 U.S.C. § 9601, et seq.

DRAFT

Docket No. _____

CONSENT AGREEMENT
AND ORDER

I. JURISDICTION

1. This Consent Agreement and Order is issued pursuant to the authority vested in the President of the United States under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9606(a), and delegated to the Administrator of the Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (January 23, 1987), and further delegated to the Regional Administrators of EPA. The actions authorized by this Consent Agreement and Order are consistent with Section 300.65 of the National Oil and Hazardous Substance Contingency Plan. 40 C.F.R. § 300.65.

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2. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Agreement and Order.

3. This Consent Agreement and Order shall apply to and be binding upon the Respondent and the United States and their agents, successors, and assigns and upon all persons, contractors, and consultants acting for either the United States or the Respondent.

4. The City of Philadelphia, and its agents, successors, and assigns, join in this Consent Agreement and Order, and agree to be bound by its terms, limitations, and conditions.

II. STATEMENT OF PURPOSE

add

5. In entering into this Consent Agreement and Order, the mutual objectives of EPA and Sable Diamonds are to conduct removal action (as defined in Section 101(23) of CERCLA, as amended, 42 U.S.C. § 9601(23)), to prevent the threatened release or mitigate the actual release of mercury in the vicinity of 733 or 735 Sanson Street, Philadelphia ("the Facility") without any admission of fault or legal responsibility on the part of the Respondent."

III. CONCLUSIONS OF LAW

6. The Facility is a "facility" as defined in Section 101(9) of CERCLA, as amended 42 U.S.C. § 9601(9).

7. The Respondent is a "person" as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(21).

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8. The liquid mercury found at and around the Facility is a "hazardous substance" as defined in Section 101(21) of CERCLA, as amended, 42 U.S.C. § 9601(14).

9. The presence of a hazardous substance at the Facility constitutes a release as defined in Section 101(22) of CERCLA, as amended, 42 U.S.C. § 9601(22)

IV. WORK TO BE PERFORMED

10. Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

11. a. Respondent shall immediately cease and desist all operations which, to its knowledge, involve mercury in any form at the facility.
- b. Respondent shall ~~use its best efforts to start to~~ clean and decontaminate, according to the criteria of paragraph 11.h, the Ronco Art Studio located on the third floor of 733 Sansom Street, Philadelphia within forty-eight (48) hours of the effective date of this Consent Order and Agreement.
- c. Respondent shall submit to EPA within five (5) days of the effective date of this Consent Agreement and Order, a plan for sampling for mercury the exterior and interior of all rooms, other than the Ronco Art Studio, located at 733 Sansom Street and 735 Sansom Street, which border on the alleyway between 733 and 735 Sansom Street.

Respondent shall include in this plan sampling of the alleyway and the exterior walls of 733 and 735 Sanson Street.

- d. Upon approval of the plan as contemplated in Paragraph 11.c. above, Respondent shall perform the required sampling.
- e. Contaminated zones in the areas sampled according to the plan developed pursuant to paragraph 11.c. will be identified by (1) the presence of visible mercury; or (2) air readings of above 10 micrograms/m³ as determined by a method approved by the Occupation Health and Safety Administration with a detection limit of 1 microgram/m³.
- f. Respondent shall clean and decontaminate, according to the criteria of paragraph 11.h., any zone identified pursuant to Paragraph 11.e as contaminated with mercury.
- g. After any cleaning, Respondent shall sample for mercury in order to demonstrate a successful decontamination of the zones identified pursuant to paragraph 11.e. Should the mercury levels not meet the criteria stated in Paragraph 11.h below the decontamination and sampling operations must be repeated until successful.

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- h. The respondent shall decontaminate the zones identified pursuant to paragraph 11.e. according to the following criteria: (1) an absence of visible mercury; and (2) a maximum air reading of 10 micrograms/m³ of mercury as determined by a method approved by the Occupational Health and Safety Administration with a detection limit of 1 microgram/m³. In addition, Respondent will use its best efforts to achieve an ambient (breathing zone) air concentration of mercury less than the City of Philadelphia guideline of 0.24 microgram/m³.
- i. The Respondent shall provide a physical examination of those employees of Sable Diamonds, Mr. Barry Sable and/or any entity of which Mr. Barry Sable has interest who may have been exposed to mercury at 735 Sanson Street.

12. Should the Respondent choose to utilize a contractor or subcontractor to perform any portion of the work required by this Consent Agreement and Order Respondent shall notify EPA of the identity of the contractor prior to the continuation of work. EPA specifically reserves the right to disapprove the contractor or subcontractor, as well as the choice of a disposal site. In the case of disapproval, Respondent will replace the disapproved contractor or disposal site with an EPA

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approved contractor or disposal site within five (5) calendar days.

13. The Respondent shall provide a final report to EPA within forty-five (45) days of the effective date of this Consent Agreement and Order and such reasonable interim reports as the EPA Project Manager may request. This final report shall describe the implementation of the actions required and certification that those actions have been completed. EPA specifically requires an interim report on the decontamination of all zones identified pursuant to paragraph 11.e., and a separate interim report of the sampling and sampling results.

14. EPA shall review the final report and within five (5) calendar days of receipt by EPA of such report EPA shall notify the Respondent in writing of EPA's approval or disapproval of this report or any part thereof. In the event of any disapproval EPA shall specify in writing both the deficiencies and the reasons for such disapproval. In the event of disapproval, within ten (10) calendar days of receipt of EPA notification of final report disapproval, the Respondent shall amend and submit to EPA a revised report.

15. Documents, including reports, approvals, disapprovals and other correspondence to be submitted pursuant to this Consent Agreement and Order, shall be sent by certified mail to the following addresses:

- 1) Documents to be submitted to EPA should be sent to:

Mr. Bill Stauteville (3HW14)
CERCLA Removal Enforcement Section
U.S. EPA, Region III

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841 Chestnut Building, 6th Floor
Philadelphia, PA 19107

- 2) Documents to be submitted to the Respondent shall be sent to:

Ralph A. Jacobs, Esquire
Hoyle, Morris & Kerr
1424 Chestnut Street
Philadelphia, PA 19102

V. DESIGNATED PROJECT MANAGER

16. The individual designated pursuant to Paragraph 15 above, shall be the Project Manager for EPA. Project Manager for the Respondent shall be _____ [representative of approved contractor]. Each Project Manager shall be responsible for overseeing the implementation of this Consent Order.

17. EPA and the Respondent shall each have the right to change their respective Project Manager. Such a change shall be accomplished by notifying the other party in writing as least five calendar days prior to the change. The absence of the EPA Project Manager from the Site shall not be cause for the stoppage of work.

VI. RECORD PRESERVATION

18. The Respondent shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession which relate in any way to the work performed hereunder' despite any document retention policy to the contrary. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records.

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VII. RESERVATION OF RIGHTS

19. The Respondent and EPA expressly reserve all rights and defenses not specifically waived by this Consent Agreement and Order. EPA reserves the right to seek monetary penalties for any future violation of law or this Consent Agreement and Order; issue additional Orders under Section 106(a); take necessary response actions under Section 104(a) of CERCLA, as amended, 42 U.S.C. § 9604(a) and/or bring a civil action under Section 106(a) of CERCLA, as amended, 42 U.S.C. § 9606(a) or Section 107 of CERCLA, as amended 42 U.S.C. § 9607.

20. Respondent shall permit EPA and its employees, agents, and contractors, to have access to the Facility, as provided below, for any of the following reasons:

- a. to enter and freely move about those portions of the Facility where the work has been or is being conducted by the Respondent pursuant to this Consent Agreement and Order, at all reasonable times and with prior notice to, and approval by Respondent, including, but not limited to, any time that work is being carried out pursuant to this Consent Agreement and Order, for the purpose of observing the implementation of activities undertaken in accordance with this Consent Agreement and Order;

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- b. to verify, at all reasonable times, the data submitted to EPA by Respondent concerning such implementation;
- c. to perform response actions EPA determines are necessary;
- d. to inspect and copy, at all reasonable times, all records, documents and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Agreement and Order;
- e. to obtain representative and/or split samples, at all reasonable times, for hazardous substances testing and evaluation.

These rights of access are in addition to, and not in substitution for, EPA's inspection authority under applicable law. All parties with access to the Facility pursuant to this paragraph shall comply with the safety plan approved by EPA and shall submit a written waiver of liability to Respondent..

VIII. SITE ACCESS

21. To the extent that the site of the removal is presently owned by parties other than those bound by this Consent Agreement and Order, the Respondent has obtained or will use his best efforts to obtain site access agreements from the present owners within 5 days of the effective date of this Consent Order. Such agreements shall provide reasonable access to EPA and/or its authorized representatives. In the event that site access agreements are not obtained within the time referenced above the

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Respondent shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within 5 days of the effective date of this Consent Agreement and Order.

IX. OTHER CLAIMS

22. Nothing in this Consent Agreement and Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Agreement and Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from this Facility.

23. This Consent Agreement and Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA as amended, 42 U.S.C. § 9611(a)(2).

24. By entering into this Consent Agreement and Order, Respondent specifically waives any right it may have to seek reimbursement from the Hazardous Substance Superfund under Section 106(b)(2) of CERCLA, as amended, 42 U.S.C. § 9606(b)(2), for the response action to be undertaken pursuant to the terms of this Consent Agreement and Order.

X. RELEASE

25. The United States and the City of Philadelphia hereby release Barry Sable, U.S. Metal & Coin and Jewelry Co., Inc., Sable Diamonds, and their officers, employees, heirs and

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authority*

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assigns, from all claims, causes of action or demands in law or in equity that either the United States or the City of Philadelphia, their agents and assigns, may have arising out of the alleged presence of mercury at the facility prior to the date of this Agreement. This release shall not preclude either the United States or the City from bringing appropriate action to enforce this agreement.

XI. OTHER APPLICABLE LAWS

26. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

27. The effective date of this Consent Agreement and Order shall be the date on which it is signed by the Regional Administrator of EPA Region III.

28. This Consent Agreement and Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by EPA.

29. Any reports, plans, specifications, schedules and attachments required by this Consent Agreement and Order are, upon approval by both parties, incorporated into this Consent Agreement and Order. Any noncompliance with such approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this

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Consent Agreement and Order and will subject the Respondent to the provisions of Section VII of this Consent Agreement and Order.

30. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Agreement and Order, except that written or verbal pre-approval of cleanup activities shall be sufficient to authorize Respondent's contractor to commence a sampling or cleanup.

XIII. PARTIES BOUND

31. No change in ownership or corporate or partnership status relating to the site will in any way alter the status of the Respondent or in any way alter the Respondent's responsibility under this Consent Agreement and Order. The Respondent will remain the Respondent under this Consent Agreement and Order and will be responsible for carrying out all activities required of the Respondent under this Consent Agreement and Order.

XIV. NOTICE TO THE STATE

32. EPA has notified the Commonwealth of Pennsylvania pursuant to the requirement of Section 106 of CERCLA, as amended, 42 U.S.C. § 9606.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

341 Chestnut Building
Philadelphia, Pennsylvania 19107

ORDER NO. 100-100000
SECTION 3-305 OF THE AIR MANAGEMENT

By Hand

Re Reply Order No. 100-100000

Mr. [Name] [Address]
722 Market Street
Philadelphia, PA 19106

SEP 1 1987

Dear Mr. [Name]:

Enclosed you will find an Order issued to Sabla Diamonds by the Environmental Protection Agency and the City of Philadelphia pursuant to Section 106 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9606 (a) and Section 3-305 of the Air Management Code, 3 Philadelphia Code § 3-305.

Please note your right to have a conference to discuss this Order as outlined in Paragraph 42. Furthermore, you may indicate your intent to comply with the terms of the Order by signing in the appropriate space on page 16, of this Order.

If you have any questions, please contact Bill Steuterville of my staff at (215)397-6678.

Sincerely,

Stephen R. Wasserman, Director
Hazardous Waste Management Division

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

341 CHAMBERS STREET
PHILADELPHIA, PA 19106

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

In Reply Refer to: 375114

Mr. Barry Sabla
Sable Diamonds
735 Sanson Street
Philadelphia, PA 19106

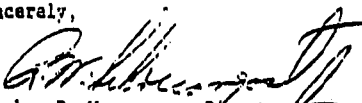
Dear Mr. Sabla:

Enclosed you will find an Order issued to Sable Diamonds by the Environmental Protection Agency and the City of Philadelphia pursuant to Section 106 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9606 (a) and Section 3-305 of the Air Management Code, 3 Philadelphia Code § 3-305.

Please note your right to have a conference to discuss this Order as outlined in Paragraph 42. Furthermore, you may indicate your intent to comply with the terms of the Order by signing in the appropriate space on page 16, of this Order.

If you have any questions, please contact Bill Stauteville of my staff at (215)597-6678.

Sincerely,


Stephen R. Wasserman, Director
Hazardous Waste Management Division

Enclosure

AR100038

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

SITE FILE

SUBJECT: Draft CERCLA Consent Agreement for Removal: DATE: MAY 24 1987
Sable Jewelers Site

FROM: Bill Stegman, EPA Region III
CERCLA Removal Action, Philadelphia

Please find the enclosed Draft CAO for the Sable Jewelers site on Sanson Street in Philadelphia. We expect to have a final CAO ready for signature on May 22, 1987. Please contact me should you have any questions.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

RE: Phone Conversation with Don Becker of the PADER
the Sable Diamond site

DATE: MAY 20 1987

TO: Mr. Adamavich *[Signature]*

FROM: MIA

THRU: Mary Letzkus, Chief
CERCLA Removal Enforcement Section

I contacted Mr. Becker of the PADER office of Emergency and Remedial Response at 11:50 a.m. on 5/13/87 to inform him of EPA involvement at the Sable Diamond site.

I briefed him about the mercury site, including the existence of the gold extracting operation at Sable Diamond (Jewelers), the visible amounts of mercury in Ms. Branda Ronco's art studio and the investigations by the City of Philadelphia and EPA. I informed him of the notification given to the owner of Sable Diamond by the EPA's OSC and of the owners stated willingness to perform the required response actions.

I further informed Mr. Becker that a negotiation meeting with the PRP would be held on 5/18/87 at the EPA offices in Philadelphia and that PADER should send a representative if PADER wished to participate.

Mr. Becker told me that someone from PADER would call me should PADER wish to become further involved. EPA will send PADER copies of any draft and final CERCLA Consent Agreement and Order's.

As of 5/20, 10:30 am PADER had not called. *[Signature]*

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